

New Jersey Historic Pesticide Contamination Task Force Recommendations

Background

The New Jersey Department of Environmental Protection (the Department) formed a Historic Pesticide Contamination Task Force in 1997 to help the Department “identify technically and economically viable alternative strategies that will be protective of human health and the environment for sites with contamination due to historical use of pesticides.”¹ The Task Force comprised nine members representing a variety of interest groups, including agriculture, environment, real estate development, banking, local government, and research institutions. It met several times over a roughly two-year period and issued its final report in March of 1999.

Task Force Recommendations

In its report, the Task Force recommended:

- That a systematic statewide approach be developed to identify and remediate sites with historical pesticide contamination through:
 - Sampling and any necessary remediation of former agricultural areas prior to development
 - Sampling and any necessary remediation of areas with exposed soils that are intensively used by children
 - Sampling and any necessary remediation of other developed areas when desired by current or potential future occupants
- That a variety of remedial approaches—including soil blending, which was not allowed previously—be allowed for sites with historical pesticide contamination
- That the Department increase knowledge and access to information on historical pesticide contamination and exposure control alternatives through education, disclosure approaches, and additional research

State of New Jersey’s Response

The Department has taken only limited actions to implement the Task Force’s recommendations. To date, the Department has not developed a systematic statewide approach to identifying and remediating sites with historical pesticide contamination, nor has it developed an education or outreach campaign or undertaken new research. For the most part, sites that require remediation are addressed on a case-by-case basis using the existing voluntary cleanup program. The Department did change some of its procedures regarding soil testing and remediation for sites with historical pesticide contamination. It now allows soil blending as a strategy for reducing contamination only at historical pesticide sites and has developed a soil testing protocol for soil blending (including site investigation prior to soil blending) and for determining “clean” soil. The Department also has issued a Fact Sheet on historical pesticide contamination and individual protection measures, maintains a website and responds to public inquiries about the issue, and plans to develop an interactive tool to make information on sampling conducted at contaminated sites accessible to the public.

In addition, some municipalities in New Jersey have established requirements that former agricultural sites undergo an environmental evaluation before being developed. Based on these evaluations site developers may be referred, as necessary, to the voluntary cleanup program. And, as knowledge and awareness of the issue grow, many developers and lenders independently undertake (or require) site evaluations, and sites may be referred to the voluntary cleanup program as a result.

¹ Historic Pesticide Contamination Task Force, *Final Report: Findings and Recommendations for the Remediation of Historic Pesticide Contamination*, March 1999, available at <http://www.state.nj.us/dep/special/hpctf/index.html>.

The following table lists each of the Task Force's recommendations and the actions that the State of New Jersey has or has not taken in response to each recommendation.

Key:

- ✓ indicates that a change was made to adopt the recommendation.
- indicates that no change was needed to adopt the recommendation.
- × indicates that the recommendation has not been adopted.

HISTORIC PESTICIDE CONTAMINATION TASK FORCE RECOMMENDATIONS	NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ACTIONS
A. Site Investigation and Remediation	
<ul style="list-style-type: none"> Sampling of former agricultural areas, and any necessary remediation, should be conducted prior to site development 	× The Department did not develop a program to require systematic sampling of former agricultural areas prior to development; however, some municipalities have adopted such requirements. At the state level, sampling and cleanup needs are addressed on a site-by-site, ad hoc basis using pre-existing state programs such as the voluntary cleanup program.
<ul style="list-style-type: none"> Sampling of former agricultural areas, and any necessary remediation, should be conducted for areas with exposed soil that are intensively used by children, such as schools, daycare centers and playgrounds. 	× The Department did not develop a program to require systematic sampling of child-use areas. Sampling and cleanup needs are addressed on a site-by-site, ad hoc basis using pre-existing state programs such as the voluntary cleanup program.
<ul style="list-style-type: none"> Sampling and remediation at sites that have already been developed, except as noted above, should be conducted whenever the current or potential future occupant desires. 	× The Department did not develop a program to require systematic sampling or remediation of developed sites on the request of the current or future occupant; it is up to the property owner to voluntarily address such concerns. Sites, and requests, are addressed on a site-by-site, ad hoc basis using existing state programs, such as the voluntary cleanup program.
<ul style="list-style-type: none"> The Department should provide guidance concerning sampling methods and exposure control alternatives to any person concerned with historic pesticide contamination. 	✓ The Department has developed guidance on sampling methods (see below) and a fact sheet that includes information on practical exposure control alternatives for individuals.
<ul style="list-style-type: none"> The Department should provide an appropriate sampling methodology specifically designed for the investigation of pesticide residues in soil at agricultural properties. 	✓ The Department has developed site investigation sampling methods for current or former farm fields and orchards (Addendum 5 of Task Force report).

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<ul style="list-style-type: none"> The Department should authorize a remedial alternative involving soil blending for pesticide residues in soil in former agricultural areas when it is protective of human health. This represents a substantial departure from current State policy and the Task Force recommends blending as a remedial option only at sites with historical pesticide contamination. 	<ul style="list-style-type: none"> ✓ The Department now allows soil blending for sites with historic pesticide contamination, but not for other contaminated sites.
B. Department Oversight	
<ul style="list-style-type: none"> At the request of the property owner or developer, the Department should oversee the investigation and remediation of sites with historical pesticide contamination and issue a No Further Action Letter when no contamination is present above the Department's residential soil cleanup criteria or when the site has been remediated (i.e., appropriate exposure controls are applied). 	<ul style="list-style-type: none"> Standard practice in the pre-existing voluntary cleanup program; no change was needed to adopt this recommendation.
<ul style="list-style-type: none"> The Department should provide local authorities (planning and zoning boards, local or county health departments) technical information and training as necessary. 	<ul style="list-style-type: none"> ✗ The Department does not provide technical information and training targeted specifically on historic pesticide contamination to local authorities. For municipalities considering adopting requirements for soil testing and remediation, the Department recommends that municipalities require parties to follow Department guidelines for soil testing and remediation and obtain No Further Action letters from the Department through the existing voluntary cleanup program, rather than institute separate technical requirements.
<ul style="list-style-type: none"> No additional action should be required at a site when information obtained by a review of the site history indicates no historic pesticide use or when sampling confirms no pesticide contamination at levels above the Department's residential soil cleanup criteria. 	<ul style="list-style-type: none"> Except for allowing soil blending as a remedial approach (see below) the requirements for and opportunities to receive a No Further Action letter have not been changed based on the recommendations of the Task Force. No Further Action letters are issued on a site-by-site basis and can generally be issued when information confirms that contamination is not present above residential soil cleanup criteria.

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C. Application of Remedial Strategies	
<ul style="list-style-type: none"> The remedial strategies described in this report are recommended as acceptable for soils with historical pesticide contamination. Remedial options (abbreviated): <ol style="list-style-type: none"> Consolidate and cover contaminated soil on-site under buildings, roads, or other approved areas; file deed notice. Cap contaminated soil with clean topsoil; file deed notice. Blend contaminated soil with clean soil within the area of concern. Blend contaminated soil with clean soil outside the area of concern but within the site. Remove contaminated soil and replace with clean soil. Treat contaminated soil to the Department's residential soil cleanup criteria (not considered practicable). 	<ul style="list-style-type: none"> Remedial options 1, 2, 5, and 6 continue to be allowed for soils with historic pesticide contamination, as they are and have been allowed for other contaminated sites; no change was needed to adopt this recommendation. ✓ The Department changed its policy to allow soil blending for soils with historic pesticide contamination (remedial options 3 & 4).
<ul style="list-style-type: none"> The remedial strategies described in this report should not apply to other areas of concern on agricultural properties such as underground storage tanks or pesticide mixing and storage areas. 	<ul style="list-style-type: none"> ✓ The remedial strategies for soil blending (options 3 and 4) apply only to agricultural soil, not to other areas of concern on agricultural properties. The other remedial strategies were already available, and continue to be available, for all contaminated sites; no change were made to state requirements concerning remedial options 1, 2, 5, and 6.
<ul style="list-style-type: none"> One or more remedial options may be used at a site based on site conditions and development plans. 	<ul style="list-style-type: none"> Standard practice in the pre-existing voluntary cleanup process; no change was needed to adopt this recommendation.
<ul style="list-style-type: none"> The use of grass and landscaping as an exposure control should only be allowed as part of an exposure control strategy when approved by the Department. 	<ul style="list-style-type: none"> Standard practice in the pre-existing voluntary cleanup process; no change was needed to adopt this recommendation.

HISTORIC PESTICIDE CONTAMINATION TASK FORCE RECOMMENDATIONS	NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ACTIONS
D. Real Estate Disclosure	
<ul style="list-style-type: none"> The Department should provide site-specific data concerning historic pesticide residue contamination in soil in its geographical information system (GIS) and allow public access through each municipal clerk's office, in accordance with "The New Residential Construction Off-Site Conditions Disclosure Act" (P.L. 1995 c.253). 	<ul style="list-style-type: none"> × The Department maintains a GIS database with site-specific data on soil and ground-water testing conducted at known contaminated sites in New Jersey, including sites with historical pesticide contamination. Currently only data on ground-water contamination are available to the public in GIS format, but the Department plans to provide additional data, including data on soil contamination from pesticides, to the public through an Internet map server.
<ul style="list-style-type: none"> Real estate professionals and the Department should develop model language in contracts informing buyers of soil contamination where appropriate, and create informational materials to explain the issue in some detail and provide buyers with contacts for more information to further educate the public. 	<ul style="list-style-type: none"> × The Department has not worked with real estate professionals to develop model language in contracts for disclosure of information on historic pesticide contamination. × The Department has not developed informational materials concerning the issue of real estate disclosure at historic pesticide contamination sites, although a Fact Sheet on historic pesticide contamination, which includes individual protection measures, has been developed (see above).
<ul style="list-style-type: none"> Sellers should provide prospective buyers with any test results that have been performed to quantify concentrations of residual pesticides that a prospective buyer requests and provide information regarding any deed notice and/or maintenance requirements applicable to the property where pesticide contamination [exists] on the property. 	<ul style="list-style-type: none"> Pre-existing laws and regulations require that sellers disclose information on test results that have been performed to quantify concentrations of contaminants (including agricultural pesticides) and information regarding any deed notice and/or applicable maintenance requirements for contaminated properties to prospective buyers. No change was needed to adopt this recommendation.
<ul style="list-style-type: none"> Sellers should provide a written disclosure to prospective purchasers of the location and conditions of common areas where contaminated soil has been consolidated in accordance with the Department's applicable soil remediation criteria. 	<ul style="list-style-type: none"> Pre-existing laws and regulations require that written disclosure be provided through deed notices, which the Department requires when any contaminated soil has been consolidated on sites. No change was needed to adopt this recommendation.
<ul style="list-style-type: none"> The State should only require a Deed Notice on the actual property where the contaminated soil has been consolidated, such as the common areas, and not on the deed of each individual property in the development. 	<ul style="list-style-type: none"> In a development, if individual properties were cleaned up to meet state cleanup standards and contaminated soil were consolidated in a different area, such as a common area, it was already standard practice in the pre-existing voluntary cleanup process to require a deed notice only in areas where contamination remains above state standards. No change was made in response to this recommendation.

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<ul style="list-style-type: none"> • Municipal clerks maintain information concerning the presence of contaminated soil in the common areas for the benefit of subsequent purchasers pursuant to the Off Site Disclosure Act. 	<ul style="list-style-type: none"> • Pre-existing laws and regulations require that municipal clerks maintain information on the presence of known contaminated sites, including any sites that have areas where contaminated soil remains in place above state cleanup standards. No changes were made in response to this recommendation.
E. Public Education and Outreach	
<ul style="list-style-type: none"> • The Department should develop a comprehensive public education program and outreach system for providing historic pesticide contamination information to the public and local authorities. • Outreach should include, a Department "Hotline" phone number, brochures and information on the Department web site. 	<ul style="list-style-type: none"> ✓ The Department maintains a website on the Historic Pesticide Contamination Task Force that includes the Task Force's final report and a fact sheet for homeowners, homebuyers, and other members of the public. × The Department has not developed a comprehensive public education and outreach system for providing information on historic pesticide contamination, beyond the public outreach and education conducted during the Task Force process. × The Department has a telephone hotline number to report environmental incidents, abuses, and complaints, but does not have a hotline for information on issues related to historic pesticide contamination.
F. Research Needs	
<ul style="list-style-type: none"> • Research the bioavailability of arsenic and other historical pesticides from soils. 	<ul style="list-style-type: none"> × The Department has not conducted additional research in response to the Task Force's recommendations.
<ul style="list-style-type: none"> • Evaluate the effectiveness and cost of various remedial strategies for reducing concentrations of historical pesticides in soils, including treatment technologies. 	<ul style="list-style-type: none"> × The Department has not conducted additional research in response to the Task Force's recommendations.
<ul style="list-style-type: none"> • Research potential impacts on ground water quality in vulnerable soils within agricultural areas. 	<ul style="list-style-type: none"> × The Department has not conducted additional research in response to the Task Force's recommendations.
<ul style="list-style-type: none"> • Monitor the economic impacts of the policies and recommendations. 	<ul style="list-style-type: none"> × The Department has not conducted additional research in response to the Task Force's recommendations.
<ul style="list-style-type: none"> • Initiate a state-wide sampling investigation of historical pesticides in soil including sensitive use areas. 	<ul style="list-style-type: none"> × The Department has not conducted additional soil sampling in response to the Task Force's recommendations.

Sources: Historic Pesticide Contamination Task Force, *Final Report: Findings and Recommendations for the Remediation of Historic Pesticide Contamination*, March 1999, available at <http://www.state.nj.us/dep/special/hpctf/index.html> and telephone interviews with New Jersey Department of Environmental Protection staff, conducted in July 2002.